

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

U.S. EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 1:24-cv-01518
)	
EPIQ FOOD HALL)	
WOODBIDGE, LLC,)	
)	
and)	
)	
4 BROTHERS PROPERTIES, LLC,)	
)	
Defendants.)	
)	

**PLAINTIFF U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION’S
MEMORANDUM IN SUPPORT OF ITS MOTION TO STRIKE DEFENDANT 4
BROTHERS PROPERTIES, LLC’S REPLY AS UNTIMELY**

I. PROCEDURAL BACKGROUND

The U.S. Equal Employment Opportunity Commission (“Plaintiff” or “the EEOC”) filed its Complaint on August 29, 2024. ECF Doc. 1, Complaint (“Compl.”). On October 28, 2024, Defendant 4 Brothers Properties, LLC (“Defendant 4 Brothers”) moved to dismiss the EEOC’s Complaint. ECF Doc. 9, Motion to Dismiss Pl.’s Compl. as to Def. 4 Brothers Properties, LLC. The following day, on October 29, 2024, the Court, through a notice of correction, informed Defendant 4 Brothers that it had “filed the documents without a Notice of Hearing Date” and instructed Defendant 4 Brothers “to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument, and to refile its Memorandum in Support separately.” Accordingly, on October 29, 2024, Defendant 4 Brothers filed an Amended Motion to Dismiss for Failure to State a Claim as well as a separately filed Memorandum in Support and Notice of Waiver of Oral Argument. *See*

ECF Doc. 12, Def. Motion to Dismiss Pl.’s Compl. as to Def. 4 Brothers Properties, LLC; ECF Doc. 13, Def. Mem. in Support of Defendant 4 Brothers Properties, LLC’s Motion to Dismiss Pl.’s Compl; ECF Doc. 14, Notice of Waiver of Oral Argument.

On November 12, 2024, the EEOC filed a timely Response in Opposition to Defendant 4 Brothers’ Amended Motion to Dismiss for Failure to State a Claim, serving it on Defendant 4 Brothers via the Court’s electronic filing system. ECF Doc. 16, Pl. Mem. in Opposition to Def. 4 Brothers Properties, LLC’s Motion to Dismiss. As per Local Rule 7(F)(1), any reply brief needed to be filed by November 18, 2024. Defendant 4 Brothers did not file its Reply to Plaintiff’s Opposition (“Reply”) until November 26, 2024, eight days late. ECF Doc. 17, Def. Mem. in Reply to Pl.’s Opposition. It did not confer with Plaintiff about filing past the deadline; nor did it move for additional time to file.

II. ARGUMENT

Local Rule 7(H) provides that “[a]fter the filing of the complaint, all pleadings, motions, briefs, and filings of any kind must be timely filed with the Clerk’s Office of the division in which the case is pending.” E.D. Va. Loc. Civ. R. 7(H). Pursuant to Local Rule 7(F)(1), “[u]nless otherwise directed by the Court ... the moving party may file a reply brief within six (6) calendar days after the service of the opposing party’s response brief.” E.D. Va. Loc. Civ. R. 7(F)(1). Pursuant to Federal Rule of Civil Procedure 6(b)(1)(A), “the court may, for good cause, extend the time with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires.” Fed. R. Civ. P. 6(b)(1)(A). “[O]n motion made after the time has expired,” the court may only extend the time “if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). “[I]gnorance of when a time period expires does not qualify as excusable neglect, nor does a busy schedule, lack of diligence, inadvertence, or

other manifestations of carelessness and laxity.’” *Key v. Robertson*, 626 F. Supp. 2d 566, 577 (E.D. Va. 2009) (citing *Eagle Fire, Inc. v. Eagle Integrated Controls, Inc.*, Civ. Action No. 3:06cv264, 2006 U.S. Dist. LEXIS 41054, 2006 WL 1720681, at *4 (E.D. Va. June 20, 2006) (quoting 1 James Wm. Moore et al., *Moore’s Federal Practice* P 6.06(3)(c))).

Defendant has violated the Local Rules by filing its Reply eight days late without obtaining leave of court to do so. Under these circumstances, the Court should strike its brief. *See Aguirre v. Joe Theismann’s Rest.*, Civil Action No. 1:19-cv-556 (AJT/MSN), 2019 U.S. Dist. LEXIS 238123, at *6 (E.D. Va. Dec. 3, 2019) (granting the defendant’s motion to strike the plaintiff’s untimely opposition filings); *Rossmann v. Lazarus*, No. 1:08cv316 (JCC), 2008 U.S. Dist. LEXIS 78925, at *5 (E.D. Va. Oct. 7, 2008) (granting the plaintiff’s motion to strike the defendant’s reply brief as untimely where it was filed five days after the deadline). Striking is especially warranted here, as Defendant 4 Brothers has not given a reason for its late filing to either the Court or to Plaintiff, and any misunderstanding of the deadline under the Local Rules will not establish excusable neglect. *Key*, 626 F. Supp. 2d at 577 (granting the defendant’s motion to strike the plaintiff’s untimely opposition brief where the plaintiff did not provide any reason that the court considered to be “excusable neglect”); *Littlejohn v. Moody*, 381 F. Supp. 2d 507, 509 (E.D. Va. 2005) (stating that the court would not consider the defendants’ rebuttal brief that was filed after the deadline and “made no request for an extension or enlargement and offered no reason for their untimely submission”).

Defendant 4 Brothers’ late filing of its Reply has occurred after the Court has already had to ask it to correct two aspects of the initial filings associated with its Motion to Dismiss. *See* ECF Docs. 9, 12-14. Being caught violating the Local Rules has not caused it to correct course.

Striking its belated Reply brief is therefore justified as a means of deterring additional violations in the future.

III. CONCLUSION

For the reasons stated herein, the EEOC respectfully requests that this Court strike from the record Defendant 4 Brothers' Memorandum of Points and Authorities in Reply to Plaintiff's Opposition. ECF Doc. 17.

Respectfully submitted,

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

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Dated: December 3, 2024.

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2024, a copy of the foregoing Plaintiff U.S. Equal Employment Opportunity Commission's Memorandum in Support of its Motion to Strike Defendant 4 Brothers Properties, LLC's Reply as Untimely was served via the Court's electronic filing system on:

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